

APPEAL NO. 032566
FILED NOVEMBER 7, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 4, 2003. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter, May 1 through July 30, 2003. The claimant appealed, arguing that the determination of the hearing officer is not supported by the evidence and is so against the great weight and preponderance of the evidence that it should be reversed. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. It was undisputed that the claimant sustained a compensable injury on _____; that she reached maximum medical improvement on June 19, 2002, with an impairment rating of 15%; that the qualifying period for the first quarter started January 17 and ended April 17, 2003; and that she did not commute any portion of her impairment income benefits. The hearing officer determined that the claimant's unemployment during the qualifying period at issue was a direct result of her impairment from the compensable injury. The claimant contends that she has met the good faith requirement of Rule 130.102(b)(2) because he has a total inability to work in any capacity. The claimant alternatively argued that she met the good faith requirement by conducting a job search during the qualifying period.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer noted that there was conflicting medical evidence and that the cumulative records of the claimant's treating doctor are conclusory in nature and do not explain how the injury causes a total inability to work.

Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. The hearing officer noted that the claimant did not look for work in each week of the qualifying period and, although she did look for work during the qualifying

period, that it was not with the intent of finding a job and did not rise to the level of a good faith job search.

Whether a claimant satisfied the good faith requirement for SIBs entitlement is a factual question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. The Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no grounds to reverse the challenged findings of the hearing officer.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **PENNSYLVANIA GENERAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C. J. FIELDS
5910 NORTH CENTRAL EXPRESSWAY
DALLAS, TEXAS 75206.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge